

In Re: App. No. 09/358,280
Response to Final Office Action of 10-28-05
Docket No. 6030-021 (formerly MISTY-52064)
Customer No. 29,335

Remarks/Arguments:

In the Office Action dated October 28, 2005 the Examiner rejected Claims 5, 8, 9, 18, 21, 23, 24, 26, and 27 under 35 U.S.C. 102(b) as being anticipated by Anderson and Cushing, rejected claims 5, 8, 9, 18, 19, 21, 23, 24, 26, and 27 under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Norman, rejected claims 7, 20, and 25 under 35 U.S.C. 103(a) as being unpatentable over Cushing in view of Shurnick, and rejected claims 9 and 27 under 35 U.S.C. 103(a) as being unpatentable over Cushing in view of Norman. No other basis of rejection was stated of record.

Background of the Law

In order to establish a proper anticipation under 35 U.S.C. §102, each and every element of the claimed invention must be disclosed in a single prior art reference. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). The claimed elements must either be inherent or disclosed expressly in the single prior art reference. *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 7 USPQ2d 1057 (Fed. Cir. 1988) and must be arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989). The absence from the reference of any claimed element necessarily negates anticipation. *Kloster Speedsteel AB. v. Crucible Inc.*, 793 F.2d 1565, 220 USPQ 81 (Fed. Cir. 1986). Anticipation can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. *In re Best*, 562 F.2d at 1255, 195 USPQ at 433. See also *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) and MPEP §2112.01.

Obviousness under 35 U.S.C. §103 is a question of law based on findings of underlying *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q (BNA) 459, 467, 15 L.Ed. 2d 545, 86 S.Ct. 684 (1966). To establish a prima facie case of obviousness, there must be some teaching, suggestion, or motivation in the prior art to make the specific combination or modification suggested by the Examiner. *In re Raynes*, 7 F.3d 1037, 1039, 28 USPPQ2d 1630, 1631 (Fed. Cir. 1993). Obviousness cannot be established by

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hindsight combination or modification to produce the claimed invention. *In re Gorman*, 933 F.2d 982, 986, 18 U.S.P.Q. 2d 1885, 1888 (Fed. Cir. 1991).

Summary of Amendments

Applicant has amended Claims 5, 18 and 24 to more clearly state and define subject matter regarded as the invention. Additionally, Applicant has introduced new Claims 29 and 30 which correspond to previously present Claims 5 and 8, which the Examiner has previously granted priority to parent application Serial No. the earliest filed application, U.S. Serial No. 07/376,380 which antedates the Cushing reference.

Applicant has also amended the specification by deleting Figures 3-8 previously introduced and object to by the Examiner as being new matter and by deleting the corresponding sections of the Brief Description of the Figures.

The amendments do not add new matter to the application. Applicant respectfully submits that the newly submitted Claims define patentable subject matter over the prior art of record in this application.

Remarks

35 USC §112 ¶1 Rejection of Claims 5, 7-10, 18-21, 23 and 24

Applicant has cancelled the matter, which was described as new matter in the respective claims. All claim amendments contain subject matter which is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Anderson does not Anticipate Claims 5, 8, 9, 18, 21, 23, 24, 26, and 27.

In light of the foregoing amendments, Anderson does not contain each and every limitation of Claim 5. Anderson does not contain a pump apparatus comprised of a *cylindrical housing having a one-way and a seal member carried by a reciprocating*

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member disposed within the cylindrical housing and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the cylindrical housing which is transmitted through the one-way valve and into the pressurizable container. Moreover, Anderson does not show or teach a means secured to the misting apparatus for attaching the misting apparatus to a person's waist. Consequently, the Anderson reference does not anticipate Claim 5.

With respect to Claims 18, 19, and 21, Anderson does not disclose *a seal member carried by a reciprocating member disposed within the pressurizable container and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the pressurizable container which is transmitted through a one-way valve.* Additionally, Anderson does not disclose the means for controlling the emission of evaporative mist. And Anderson does not show or teach an attachment for securing the pressurizable container to individual for hands free carrying of the apparatus. Therefore, Anderson reference does not anticipate Claims 18, 19, and 21.

With respect to Claims 24, 26, and 27, Anderson does not disclose *a seal member carried by a reciprocating member disposed within the pressurizable container and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the pressurizable container which is transmitted through a one-way valve.* Therefore, Anderson reference does not anticipate Claims 24, 26, and 27.

Cushing does not Anticipate Claims 5, 8, 18, 19, 21, 23, 24, and 26

In light of the foregoing amendments, Cushing does not contain each and every limitation of independent Claim 5. Cushing does not contain a pump apparatus comprised of *a cylindrical housing having a one-way valve operably and a seal member carried by a reciprocating member disposed within the cylindrical housing and reciprocably moveable therein, and a handle coupled to the reciprocating member,*

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whereby reciprocal movement of the reciprocating member creates a positive pressure within the cylindrical housing which is transmitted through the one-way valve and into the pressurizable container. Moreover, Cushing does not show or teach a means secured to the misting apparatus for attaching the misting apparatus to a person's waist.

With respect to Claims 18, 19, and 21, Cushing does not disclose *a seal member carried by a reciprocating member disposed within the pressurizable container and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the pressurizable container which is transmitted through a one-way valve.* Additionally, Cushing does not disclose the means for controlling the emission of evaporative mist. And Cushing does not show or teach an attachment for securing the pressurizable container to individual for hands free carrying of the apparatus. Therefore, Cushing reference does not anticipate Claims 18, 19, and 21.

With respect to Claims 24 and 26, Cushing does not disclose *a seal member carried by a reciprocating member disposed within the pressurizable container and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the pressurizable container which is transmitted through a one-way valve.* Therefore, Cushing reference does not anticipate Claims 24 and 26.

Accordingly, based upon the foregoing express disclosure and teaching of the Anderson and the Cushing reference, express claimed elements of the presently pending claims are clearly not present in the reference, and consequently, inappropriate as a basis for anticipation under 35 U.S.C. §102(b).

Anderson in light of Norman does not render Claims 5, 8, 9, 18, 19, 21, 23, 24, 26, and 27 Obvious

Anderson does contain each and every limitation of independent Claim 5, as noted above. The Norman reference does not contain limitations that *a cylindrical housing having a one-way valve and a seal member carried by a reciprocating member*

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disposed within the cylindrical housing and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the cylindrical housing which is transmitted through the one-way valve and into the pressurizable container. Therefore, Anderson in light of Norman does render Claim 5 obvious. More so, Norman does not disclose where spray nozzle and valve 8 is to be operably located in the device.

Anderson does not contain each and every limitation of independent claim 18. Anderson does not contain the limitation that *a seal member carried by a reciprocating member is disposed within the pressurizable container and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the pressurizable container which is transmitted through a one-way valve.*

Anderson does not contain each and every limitation of independent claim 24. Anderson does not contain the limitation that *a seal member carried by a reciprocating member is disposed within the pressurizable container and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the pressurizable container which is transmitted through a one-way valve.*

Cushing does not render Claims 10 and 28 Obvious

Applicant has cancelled Claim 10; therefore the obviousness rejection is moot in light of the foregoing amendments.

Cushing does contain each and every limitation of Claim 28, as noted above. Cushing does not contain the limitation that *a seal member carried by a reciprocating member is disposed within the pressurizable container and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the pressurizable container which is transmitted through a one-way valve.*

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Cushing in light of Shurnick does not render Claims 7, 20, and 25 Obvious

Applicant has withdrawn Claims 7, 20, and 25; therefore the obviousness rejection is moot in light of the foregoing amendments.

Cushing in light of Norman does not render Claims 9 and 27 Obvious

Applicant has cancelled Claim 9; therefore the obviousness rejection is moot in light of the foregoing amendments.

Cushing does contain each and every limitation of Claim 27, as noted above. The Norman reference does not contain limitations that *a cylindrical housing having a one-way valve and a seal member carried by a reciprocating member disposed within the cylindrical housing and reciprocably moveable therein, and a handle coupled to the reciprocating member, whereby reciprocal movement of the reciprocating member creates a positive pressure within the cylindrical housing which is transmitted through the one-way valve and into the pressurizable container.* Therefore, Anderson in light of Norman does not contain each and every limitation as to render Claim 5 obvious.

Accordingly, express claimed elements of the presently pending claim are not present in the Anderson reference in view of Norman, the Cushing reference in view of Shurnick or Norman; therefore the above-mentioned references are inappropriate as a basis for obviousness under 35 U.S.C. 103(a).

Summary

Accordingly, Applicant submits that the pending claims are patentably distinct from and over the art cited and of record. Favorable reconsideration of the rejection of the pending claims is solicited.

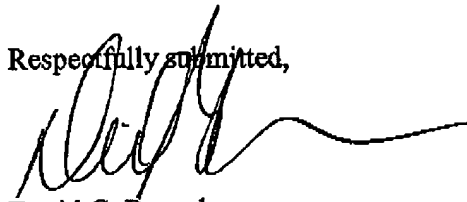
This Amendment Letter is being concurrently filed with a Request for Continued Examination, and a Transmittal Letter that includes a claim fee calculation and any applicable requests for extension of time, which may be required for the proper presentation and consideration of the present amendments. While no additional fees other than those stated in the Transmittal Letter are believed to be required in connection

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with the filing of this amendment, the Director is hereby authorized to deduct any such fees from Deposit Account No. 18-2000 of which the undersigned is an authorized signatory.

Applicant solicits the Examiner's favorable reconsideration of the rejections and objections of record and submits that the presently pending claims are allowable over the art cited and of record, and therefore requests that the pending Claims 9-18 be allowed.

Respectfully submitted,



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April 28, 2006

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